9 FAM 42.41 Procedural Notes

(TL:VISA-188; 04-09-1999)

9 FAM 42.41 PN1 Notifying Beneficiary of Approved Visa Petition

9 FAM 42.41 PN1.1 Beneficiaries of Immediate Relative or Preference Petitions

(TL:VISA-170; 10-01-1997)

Upon receipt of an approved petition granting an alien immediate relative or preference status, the National Visa Center (NVC) shall send the alien beneficiary the Packet 3 or Packet 3A notifying the beneficiary of receipt of the petition and advising the alien what steps, if any, to take in applying for a visa. [See 9 FAM 42.63 PN5.]

9 FAM 42.41 PN1.2 Beneficiaries of Orphan Petitions

(TL:VISA-170; 10-01-1997)

Where required or when requested, INS will cable or fax directly to the post or the INS officer abroad information on immigrant petitions for orphans and approval of Form I-600A, Application for Advance Processing of Orphan Petition. Upon receipt of the cable or fax, the consular officer shall notify the petitioner of the steps to be taken for further processing of the case.

9 FAM 42.41 PN2 Attaching Petition and Supporting Documents to Visa

(TL:VISA-170; 10-01-1997)

See 9 FAM 42.73 PN2.

9 FAM 42.41 PN3 Transferring Petition to Another Post

9 FAM 42.41 PN3.1 Transferring Files

(TL:VISA-170; 10-01-1997)

See 9 FAM 42.61 PN1.

9 FAM 42.41 PN3.2 Record of Transfer by Transferring Post

(TL:VISA-170; 10-01-1997)

The transferring post must make a record of the transfer. [See 9 FAM 42.61 PN1.3.] [IVACS posts see instructions in IVACS Manual.]

9 FAM 42.41 PN4 Petitions Depending on Blood Test

(TL:VISA-188; 04-09-1999)

In cases in which there is doubt regarding the relationship claimed in a Form I-130 petition, INS may approve the petition conditioned upon satisfactory blood or genetic test reports [see 9 FAM *42.41 N5 and* 9 FAM 42.41 Exhibit II] being submitted to the consular officer. The pertinent INS regulation (8 CFR 204.2(d)(2)) is quoted below:

"(vi) Blood tests. The director may require that a specific Blood Group Antigen Test be conducted of the beneficiary and the beneficiary's father and mother. In general, blood tests will be required only after forms of evidence have proven inconclusive. If the specific Blood Group Antigen Test is also found not to be conclusive and the director determines that additional evidence is needed, a Human Leucocyte Antigen (HLA) test may be requested. The United States Public Health Service physician who is authorized overseas or by a qualified medical specialist designated by the district director will conduct tests, at the expense of the petitioner or beneficiary. The results of the tests should be reported on Form G-620. Refusal to submit to a Specific Blood Group Antigen or HLA test when requested may constitute a basis for denial of the petition, unless a legitimate religious objection has been established. When a legitimate religious objection is established, alternate forms of evidence may be considered based upon documentation already submitted."

9 FAM 42.41 PN5 Use of Genetic Testing to Determine Relationships

(TL:VISA-183; 12-18-1998)

Genetic testing can be extremely useful for establishing or refuting biological relationships in citizenship and visa cases where no other credible evidence of such ties exists. Consular officers cannot require that applicants undergo such testing, but may suggest it as an option.

9 FAM 42.41 PN5.1 When to Recommend Genetic Testing

(TL:VISA-183; 12-18-1998)

Genetic testing is a useful tool for verifying an alleged blood relationship when no other form of credible evidence is available. Genetic testing is most commonly used to verify a parent/child relationship in conjunction with a citizenship case or an immigrant visa application. However, due to the expense, complexity and logistical delays inherent in parentage testing, genetic testing should be used only if no other credible proof of the relationship exists. When genetic testing appears warranted, the consular officer should advise the applicant that:

(1) Genetic testing **may** establish the validity of the relationship;

(2) Such testing is entirely voluntary;

(3) All costs of testing and related expenses must be borne by the petitioner/beneficiary and paid to the laboratory in advance; and

(4) Submitting to testing does not guarantee the subsequent issuance of a U.S. passport or an immigrant visa.

9 FAM 42.41 PN5.2 Genetic Testing Not Permitted for Consular Form I-130 Adjudication

(TL:VISA-183; 12-18-1998)

Genetic testing is never appropriate in cases in which the post has been asked to accept a Form I-130 petition for adjudication. Consular officers **may not** accept a Form I-130 petition that is based on the results of genetic testing. Such petitions should be forwarded to INS as not clearly approvable. The accompanying memo should explain why other evidence of the alleged relationship is unavailable or not credible, to alert INS to the need for genetic testing. INS, on the other hand, can approve a petition based on genetic testing, and may request a post's assistance in ensuring that the potential beneficiary submits to such testing under appropriate safeguards. INS may also approve a Form I-130 contingent upon verification of an alleged relationship through genetic testing. Consular officers should return to INS any petitions that have been disproven by DNA test results.

9 FAM 42.41 PN5.3 How Genetic Testing Works

(TL:VISA-188; 04-09-1999)

a. The laboratory testing performed in cases of claimed parentage involves an examination of a collection of genetic markers present in DNA samples obtained from blood or other tissue. The laws of genetics dictate that individuals who are related as biological parent and child will share one-half of their respective collection of genetic markers. A deviation of the test results from this fundamental law of genetics (except in rare occurrences of mutation) excludes the possibility of a parent-child relationship among tested individuals.

b. If test results are consistent with a parent-child relationship, statistical procedures developed and recommended by the American Association of Blood Banks (AABB) allow a probability of parentage to be calculated to assist in weighing evidence in favor of, or against, questioned parentage. Typically, with DNA test methods now available, a probability of paternity (or maternity) of 99 percent or greater can be established. Except in rare circumstances, AABB standards mandate 99 percent to be the minimum requirement for the probability of relationship. *This statement, however, oversimplifies matters and does **not** mean that all results 99 percent and higher should be accepted as proof of paternity (maternity), nor that all results below 99 percent exclude the relationship. [See 9 FAM 42.41 N5.4.]*

c. Posts should consult the department (CA/OCS/ACS for citizenship cases and CA/VPF/P for visa cases) concerning paternity/maternity probability when parentage blood testing, as opposed to genetics testing, is performed. Human leukocyte antigen (HLA) and other blood typing tests are often sufficient to resolve a routine paternity case, but provide only a limited amount of genetic information. Blood typing also requires testing on fresh blood samples, which may not be feasible in countries without local testing facilities or means of shipping samples in a timely fashion.

9 FAM 42.41 PN5.4 Determining Acceptable Probability Standards

(TL:VISA-188; 04-09-1999)

When determining acceptable probability standards, posts should:

(1) Consider the type of test performed;

(2) Consider the genetic profile of the local population;

(3) Consider factors specific to the case at hand;

(4) Consult with local physicians and laboratories;

(5) Consider local fraud profiles; and

(6) Establish a post-specific desired level of confidence.

Posts should place this information in a cover letter that should be forwarded to laboratories with each request for genetic testing. **Any post that proposes to impose a standard higher than 99 percent must provide a justification to VO/F/P before implementing the standard.**

9 FAM 42.41 PN5.5 Determining Type of Testing Desired

(TL:VISA-188; 04-09-1999)

Although blood typing is still occasionally used in parentage cases, DNA typing is now the preferred method of testing, and is increasingly used on a routine basis. There are two basic types of DNA testing currently available from laboratories:

(1) Restriction fragment length polymorphism (RFLP) mapping; and

(2) Polymerase chain reaction (PCR) based testing.

9 FAM 42.41 PN5.5-1 RFLP Mapping

(TL:VISA-188; 04-09-1999)

RFLP mapping is the older of the two technologies, and represents the most discriminatory DNA test available. A typical collection of DNA probes used for RFLP mapping will exclude an average of more than 99.99-plus percent of false parentage claims, and will generally provide a probability of paternity or maternity in excess of 99 percent for an alleged parent who is not excluded. The drawback of RFLP mapping is the relatively large amount of DNA sample needed to obtain a result. The amount of DNA typically needed for RFLP testing requires that blood samples be obtained from the tested individuals. This can complicate the collection process and shipment of biological specimens from some countries to a laboratory in the United States. *In cases where substitution of a close relative is likely, posts should request the laboratory to test at least six genetic markers if RFLP mapping is used.*

9 FAM 42.41 PN5.5-2 PCR-based Testing

(TL:VISA-188; 04-09-1999)

DNA typing by PCR eliminates the need for blood samples from the tested individuals *and is the only alternative in countries where blood samples cannot be collected or shipped.* Instead, a swab can be used to "scrape" cells lining the cheeks (i.e., buccal swab), which then serve as a source of DNA for analysis. Buccal swabs can be readily obtained and can be shipped around the world more easily than blood samples. Buccal swabs provide a reliable source of DNA for PCR-based DNA typing. *The limitation of PCR-based testing, however, is typically ten to 100 times less powerful than the RFLP mapping.* Reduced precision may not be a significant issue in cases in which a known parent and child are tested with an alleged parent (i.e., a typical parentage trio). However, quite often the testing is conducted with only a child and one alleged parent. In this situation, a standard battery of PCR-based tests may fall short of providing the desired level of confidence regarding parentage. In such cases, additional samples may need to be procured to provide adequate DNA for extended testing using RFLP mapping. In rare occasions, testing the tissue of deceased individuals, utilizing conventional nuclear DNA testing (paternal and maternal lines) and mitochondrial DNA testing (maternal line only), has been utilized. Posts confronted with such a case should contact CA/OCS/ACS for guidance. *In cases where substitution of a close relative is likely, posts should request the laboratory to test at least 15 genetic markers if PCR-based testing is used.*

9 FAM 42.41 PN5.6 Choosing a Testing Facility

(TL:VISA-183; 12-18-1998)

a. In most instances, posts will refer applicants or sponsors to U.S.-based laboratories for testing. The Department generally requires that any testing conducted through a U.S.-based laboratory involve a facility accredited by the AABB parentage testing committee. [See 9 FAM 42.41 Exhibit III.] In cases where a non-AABB laboratory is used, that facility should provide the Department (CA/OCS/ACS or CA/VO/F/P, as appropriate) with a copy of its criteria to ensure that proper safeguards are employed.

b. The Department realizes that competent parentage testing facilities exist in foreign countries. Provided these laboratories meet or exceed the AABB standards, posts have the discretion to accept parentage-testing results from such facilities. Whether the petitioner/sponsor opts to undergo testing through a U.S.-based laboratory or a foreign facility, however, it is imperative that the same facility test the DNA samples from both the child and the alleged parent. Where the petitioner/sponsor is physically present in the United States, therefore, this will dictate that a U.S.-based laboratory conduct the testing and relay the results to the panel physician.

9 FAM 42.41 PN5.7 Interpreting DNA Test Results

(TL:VISA-188; 04-09-1999)

a. Regardless of the test methodology used, consular officers should use caution in interpreting DNA test results. Consular officers must be aware of the limitations of any type of genetic testing. Most importantly, there is no test that will prove parentage with 100 percent certainty. Statistical calculations will only yield probabilities that approach 100 percent.

b. *How much testing is needed to ensure a reliable conclusion regarding parentage in an immigration case is difficult to answer easily. Generally, it is generally true that the more genetic markers analyzed, the greater the likelihood a non-parent blood relative will be identified as such, but it is not possible to define that number. Posts that believe substitution could occur should alert the testing laboratories of the need for more extensive testing and statistical calculations to determine whether a parent/child relationship actually exists. Posts should contact CA/VO/F/P if they need assistance in notifying laboratories on the AABB list. [See 9 FAM 42.41 Exhibit III.]*

9 FAM 42.41 PN5.7-1 Intermarriage Within Family

(TL:VISA-188; 04-09-1999)

An individual could potentially "try and beat the system" by presenting an aunt, uncle, or grandparent for the alleged parent of the child. Since the substituted participant will generally be related to the child, he/she will share some genetic markers characteristic of the family and may appear to be the parent of the tested child, particularly in a society where interfamily marriages are common. *In such a population, a post might advise laboratories that a higher than usual degree of probability is desired and should provide the laboratory with a description of the local genetic profile. The laboratory may then test a wider range of genetic markers to achieve a more refined result.* Consular officers should carefully review any test result provided by a laboratory to ensure that sufficient testing was done to distinguish between an aunt/uncle or grandparent of a child and the child's true parent. *[See also 9 FAM 42.41 N5.10.]*

9 FAM 42.41 PN5.7-2 Case Specific Information

(TL:VISA-188; 04-09-1999)

It is extremely important that the consular and medical personnel coordinating the testing evaluate the test results in light of non-genetic evidence they have gathered. Such information may include clues of premeditated misrepresentation of one or more members of a family. This information may affect the laboratory's assumptions, analysis of the test results and even the number of genetic markers compared.

9 FAM 42.41 PN5.8 Establishing Procedural Safeguards

(TL:VISA-183; 12-18-98)

To assure the integrity of the results, all stages of DNA testing must be conducted under appropriate safeguards. Whether conducted by an accredited U.S.-based laboratory [see 9 FAM 42.41 Exhibit III], a qualified local laboratory, or a facility in a third country, safeguards must include strict controls to protect the chain of custody of blood or tissue samples, identification of the parties to be tested (generally including photographing and even fingerprinting of the individuals tested), and correct preparation of test results. Additionally, some posts have instituted internal controls over the handling of IV or transmission cases involving DNA testing, based on the local context and working conditions.

9 FAM 42.41 PN5.9 Genetic Testing Procedures

(TL:VISA-188; 04-09-1999)

a. The petitioner/parent must:

(1) Select a laboratory,

(2) Contact the laboratory directly, and

(3) Make the necessary arrangements (including payment) for conducting the genetic test.

The laboratory will send a testing kit and explicit instructions to the post's panel physician, either directly or through the consular section. While Department of State medical officers and facilities **cannot** be used for the collection of blood or tissue samples, consular officers are responsible for taking necessary safeguards against tampering with the process. Consular managers have discretion, based on local fraud conditions and the vulnerability of panel physicians to outside pressure, to determine whether or not the presence of a consular officer (or associate) is required to ensure adherence to proper safeguards.

b. Following the blood/sample draw, the panel physician should return the test kit directly to the appropriate laboratory by the most secure and expedient method (generally, express mail). **Under no circumstances should posts use the diplomatic pouch to return samples to the testing laboratory.**

9 FAM 42.41 PN5.10 Follow-up with Laboratory

(TL:VISA-188; 04-09-1999)

Posts should not hesitate to contact the laboratory for clarification if the laboratory's findings are inconclusive. Laboratories are able to conduct analysis of additional genetic markers to help resolve such cases. It is also possible for a laboratory to calculate the likelihood the tested individual is an uncle as well as the likelihood that he is a father. Where such concerns exist, officers should ask the laboratory to calculate which relationship is favored and by how much. A laboratory which states it is unable to comply with this type of a request should not be used for tests when substitutions are a concern, and posts are requested to contact VO/F/P in such instances for further guidance.

9 FAM 42.41 PN5.11 Communicating Results of Tests

(TL:VISA-183; 12-18-1998)

In all phases of testing, communication **must** be directly between the laboratory or panel physician and the consular officer. The laboratory or panel physician should ensure that all test results are delivered to the consular officer in a manner that precludes tampering. Under no circumstances should any other party, including those being tested, be permitted to carry or transport blood/tissue samples or test results. Since the applicant or sponsor is bearing full financial responsibility for testing, however, department has no objection to that person receiving a copy of the results from the laboratory or panel physician.